

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ELLIOT SMERLING,	:	23cv3988 (DLC)
	:	21cr317 (DLC)
Petitioner.	:	
	:	<u>ORDER</u>
-v-	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	
	:	
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DENISE COTE, District Judge:

On May 12, 2023, Elliot Smerling, appearing pro se, moved to vacate or set aside his sentence pursuant to 28 U.S.C. § 2255 for ineffective assistance of counsel. On May 18, the Court ordered the Criminal Division of the U.S. Attorney's Office for the Southern District of New York to file an answer or other pleading in response to the motion by July 17.

In a letter of June 14, the Government informed the Court of its need to obtain sworn testimony from Smerling's prior counsel to adequately respond to the petition. On June 14, the Court ordered Smerling to execute and return an "Attorney-Client Privilege Waiver (Informed Consent)" form. The Order further granted the Government an additional 45-days from receipt of the signed Waiver to file its opposition. Smerling executed the Waiver on July 5, 2023.

On August 18, 2023, the Government timely filed its

opposition on the criminal docket. The Government has informed the Court that its attempt to mail Smerling a copy of its opposition was unsuccessful.

On September 6, 2023, Smerling moved for summary judgment on his § 2255 petition, arguing that "Respondent did not oppose Movant's Habeas proceeding." Smerling having not received a copy of the Government's opposition brief, it is hereby

ORDERED that Smerling's September 6 motion is dismissed as moot.

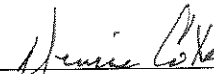
IT IS FURTHER ORDERED that the Clerk of Court is directed to file the Government's opposition of August 18 on the civil docket associated with Smerling's § 2255 petition.

IT IS FURTHER ORDERED that all future filings related to Smerling's § 2255 petition shall be filed on both the civil and the criminal dockets.

IT IS FURTHER ORDERED that, by **September 22, 2023**, the Clerk of Court is directed to mail a copy of this Order and the Government's August 18 opposition to Smerling and note service on the docket.

IT IS FURTHER ORDERED that Smerling shall have until **November 17, 2023**, to file a response.

Dated: New York, New York  
September 8, 2023

  
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DENISE COTE  
United States District Judge